Agenda Date: 4/28/04
Agenda Item: 2C

State of New Jersey

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
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ENERGY

IN THE MATTER OF THE REQUEST OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR A WAIVER OF FILING REQUIREMENTS UNDER N.J.A.C.14:5A, NUCLEAR PLANT DECOMMISSIONING COST AND TRUST FUND REVIEW	))))))	Order Granting Waiver Nunc Pro Tunc and Directing the Filing of Supplemental Testimony Docket No. EO03121014

(SERVICE LIST ATTACHED)

BY THE BOARD:

Background

At its public meeting on November 6, 2002, the Board voted to readopt with minor modifications N.J.A.C.14:5A, *Nuclear Plant Decommissioning Cost and Trust Fund Review* ("Chapter 14:5A"), and following receipt and review of comments from Jersey Central Power & Light Company ("JCP&L" or "Company"), the only utility affected by the re-adoption, and the Division of the Ratepayer Advocate ("Advocate"), the readopted regulations and related amendment became effective on May 8, 2003 and June 2, 2003, respectively. As stated in subchapter 1.1, the purpose of Chapter 14:5A is

> to provide a mechanism of periodic review of the estimated costs of decommissioning nuclear generating stations owned by New Jersey electric utilities for the purpose of assuring that adequate funds are available at the cessation of commercial operation of each of the facilities to assure completion of decommissioning activities. The rules also set forth decommissioning trust fund reporting requirements for electric utilities and procurement guidelines for the selection of

investment managers and trustees, in order to provide the Board timely information related to its oversight of the utilities' management of the funds.

As a result of the divestiture by the Company, Public Service Electric & Gas Company ("PSE&G") and Atlantic City Electric Company ("Atlantic") of their operating nuclear units following the enactment of the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 *et seq*. ("EDECA") in February 1999, only the Company's 25% ownership interest in Three Mile Island Unit No. 2 ("TMI-2"), a non-operating nuclear unit located near Middletown, Pennsylvania, and the Company's 44% ownership interest in the Saxton Nuclear Experimental facility ("Saxton"), also a non-operating facility located in Pennsylvania, continue to be subject to Chapter 14:5A.[1]

As indicated by the Company in its waiver request noted below, due to the accident at TMI-2 on March 28, 1979, the unit has not operated since then and is currently being maintained in a condition of monitored storage under a "possession only" license granted by the Nuclear

[1]While the state's ratepayers are no longer funding decommissioning costs of the divested units on a going forward basis, pursuant to the agreements approved by the Board for the sale of the Company's 25% interest in TMI-1 in December 1999 and Oyster Creek in August 2000, the Company made one-time "top-off" payments to the decommissioning trust funds established for these units of $26.2 million and $113.8 million, respectively on the closing dates of the sales. The TMI-1 sale was approved by the Board's Summary and Final Orders in Docket No. EM98121409 dated December 15, 1999 and March 4, 2003 respectively, and the Oyster Creek sale by the Board's Summary and Final Orders in Docket No. EM99120917 dated July 28, 2000 and November 21, 2003, respectively. Rate recovery previously approved for the recovery of decommissioning costs in Docket Nos. ER95120633 *et al.* by the Board's Summary Order dated March 24, 1997, *i.e.*, $5.2 million annually for TMI-1 and $22.5 million annually for Oyster Creek, was applied to the recovery of the top-off payments after the sale closings. Recovery of the Oyster Creek top-off payment was reduced to $18.2 million annually, including carrying costs, effective October 1, 2000 pursuant to the Company's compliance filing dated August 29, 2000, as authorized by the Board at its public meeting on July 20, 2000. Recovery of the TMI-1 top-off payment continued at $5.2 million per year until August 1, 2003. By Summary Order in Docket Nos. ER02080507 *et al.* dated August 1, 2003, effective on that date the Board approved recovery of the remaining balance of the Oyster Creek top-off payment at the rate of $14.9 million per year, including carrying costs, and the remaining balance of the TMI-1 top-off payment at the rate of $2.1 million per year, without carrying costs, both through August 2009. Other than the repayment of the top-off payments, JCP&L's ratepayers have no further financial or other liability for the decommissioning of these units. Ratepayer funding of decommissioning costs of $29.6 million per year associated with PSE&G's ownership shares of the Hope Creek, Peach Bottom and Salem nuclear units, which were transferred to PSEG Power LLC, an unregulated affiliate of the utility in August 2000, ceased as of August 1, 2003 pursuant to the June 6, 2003 Stipulation of Settlement approved by the Board's Summary Order in Docket No. EO02080610 dated July 31, 2003. Decommissioning funding by Atlantic's ratepayers of $6.4 million per year associated with Atlantic's ownership shares of these same units ended in October 2001 upon the closing of the sale of Atlantic's nuclear interests to PSEG Power LLC and PECO Energy Company pursuant to the Board's July 21, 2000 Order approving the sale in Docket No. EM99110870.

Regulatory Commission ("NRC"). Current plans call for the decommissioning of the unit to begin upon the expiration of the operating license of its sister unit, the undamaged Three Mile Island Unit No. 1 ("TMI-1"), a 786 Mw nuclear unit formerly owned by the Company and its Pennsylvania affiliates, Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec"), all three of which are operating utility subsidiaries of FirstEnergy Corp. based in Akron, Ohio. TMI-1 was previously owned and TMI-2 is currently owned 25% each by the Company and Penelec, and 50% by Met-Ed. TMI-1 was acquired from the Company and its affiliates in December 1999 by AmerGen Energy Company, LLC ("AmerGen"), an unregulated independent power producer based in Pennsylvania and a subsidiary of Exelon Corp. As part of the agreement of sale, AmerGen agreed to negotiate an agreement with the Company and its affiliates to perform decommissioning activities at TMI-2 in conjunction with those at TMI-1 upon the termination of TMI-1's operating license,[2] which if not extended will expire in 2014. Saxton is a small demonstration reactor that last operated in 1972, and has been undergoing decommissioning for several years. According to the Company, the remaining decommissioning work needed to terminate the facility's NRC license is expected to be completed by the third quarter of this year.

In addition to the filing of decommissioning trust fund performance data annually on or before April 15th, Chapter 14:5A requires an updated decommissioning cost estimate ("Update") for each subject facility to be filed with the Board every four years (*i.e*., initially on January 1, 1996 and every four years thereafter), unless otherwise directed by the Board, as set forth in subchapter 2.1 (a). The elements the Update is to contain are specified in subchapter 2.2, and include generic information as well as a cost estimate for decommissioning the subject facility itself. The generic information includes, *inter alia*, a review of the state of the art since the last decommissioning cost update was made, the actual costs of decommissioning domestic and foreign facilities, the status of sites available for the disposal of high and low level radioactive waste and related costs, waste transportation methods, as well as regulatory changes and insurance costs. For the subject facility the required information includes, *inter alia*, the method of decommissioning chosen,[3] whether the cost estimate is site-specific or based on generic NRC guidelines, the escalation and contingency rates assumed in making the cost estimate, the remaining spent fuel storage capacity at the plant site, the estimated decommissioning cost and start date assumed as the basis for the decommissioning funding included in the utility's rates, as well as an explanation of the method used to calculate the annual contribution to the decommissioning trust fund and the inflation and fund earnings rates assumed in making the calculation.

In conjunction with the filing of an Update, subchapters 3.1 and 3.2 of Chapter 14:5A require that public notice of the filing be given and a 60 day period from that date be allowed for public comment. Additionally, as set forth in subchapters 3.2 (c), 3.4 and 3.5, should the

[2] As set forth in Section 6.18 of the TMI-1 purchase agreement executed on October 15, 1998.

[3] *i.e.*, which of the three methods defined in subchapter 1.2 (DECON, ENTOMB and SAFSTOR), or other method found acceptable by the NRC.

Board determine "a need for a formal proceeding to review the present funding level for any of the trusts," the Board is to establish a schedule for the filing of supplemental information or testimony and the propounding of discovery, and within 90 days of the initiation of the proceeding to hold, upon proper notice, a public hearing for the receipt of comments and schedule such additional evidentiary and public hearings as are deemed necessary by the Board.

Waiver Request

As noted above, the Company's cost Update for Saxton and TMI-2 was due on January 1, 2004. By letter to the Board's Secretary dated December 10, 2003 ("waiver request"), the Company requested a waiver of the requirement to file an Update, maintaining that this requirement of Chapter 14:5A was intended to apply to facilities in commercial operation, and thus had no relevance to Saxton[4] and only limited relevance to TMI-2, in that TMI-2 operated for only about 3 months prior to the March 1979 accident, after which it underwent lengthy clean up activities and a period of monitored storage now approaching 25 years. In view of these unique circumstances, the Company believes a waiver is justified and should be granted by the Board, thereby avoiding the assertedly costly and burdensome reporting requirements an Update would entail. Moreover, the ongoing annual reporting requirements on the performance of TMI-2's decommissioning trust funds should, the Company maintains, be "sufficient to protect the Board's interest in ensuring that decommissioning funds are being managed effectively and will be available when needed." Finally, in recognition of the Board's "legitimate interest in reviewing the costs of and funding for the future decommissioning of jurisdictional nuclear facilities," in lieu of filing an Update the Company proposes submitting, when completed, a copy of a 1996 TMI-2 decommissioning study performed for the NRC that is now being updated. (Waiver request at 4-7). Following the filing of the waiver request, the Company advised Staff that the study was being prepared by TLG Services, Inc. ("TLG"), and is expected to be completed by the third quarter of this year.

[4] While noting that Saxton was an experimental as opposed to a commercial reactor, as an additional reason for exempting Saxton from the Update filing requirement the Company cites the Chapter 14:5A filing it made with the Board in December 1995, in which Saxton cost data was not included on the basis that the unit's capacity was less than 200 Mw and thus assertedly exempt from the Chapter 14:5A filing requirements based on proposed rule language published in 1991. (Waiver request at 5, footnote 4).

Discussion and Findings

Saxton

As the Company notes in its waiver request, it did not include Saxton in its last cost Update (the 1996 Update filed in December 1995),[5] even though Chapter 14:5A, prior to its re-adoption by the Board, did not provide for an exemption based on unit size. Nonetheless, the omission of Saxton from the previous Update was not opposed, as the Company also points out. Moreover, in its Summary Order in Docket Nos. ER02080507[6] *et al.* dated August 1, 2003 (the "Deferred Balances Order"), the Board ended the funding of Saxton decommissioning costs by the Company's ratepayers, finding that they had contributed more than their fair share of the cost of decommissioning this unit relative to the ratepayers of the Company's Pennsylvania affiliates, whose funding ended on January 1, 1999.[7] (Deferred Balances Order at 14). Additionally, Saxton is expected to be fully decommissioned by the end of the year. Thus in lieu of filing a formal Update, the Company need only file its latest estimate of the cost of decommissioning this unit, the date by which decommissioning is expected to be completed, how much has been expended on decommissioning to date, and what the sources of funding will be for the amount remaining to be spent. Accordingly, with the exception of this data, the Board HEREBY GRANTS the Company's requested waiver with respect to Saxton, *nunc pro tunc.*

TMI-2

The Board finds merit in the Company's argument that the uniqueness of the TMI-2 situation justifies relaxing the requirement to file those elements of the cost Update that have limited or no relevance to TMI-2. Reporting requirements with respect to on site spent fuel storage capacity and the potential need for expanded storage capacity, as well as the status of high and low level disposal sites for radioactive wastes and related pricing structures and transportation methods may, for example, have limited relevance to TMI-2, inasmuch as the Company's 1996 Update indicated much of the radioactive material associated with the unit's damaged fuel core has been removed and disposed of off site. TLG, the consultants retained by the Company to prepare an updated site-specific decommissioning cost estimate for TMI-

[5] The Company did not file an Update in December 1999 for the year 2000 because it was in the process of divesting its operating nuclear units, TMI-1 and Oyster Creek at that time, as it advised the Board by letter in Docket No. EM99120917 dated December 13, 1999. (Waiver request at 5).

[6] *I/M/O the Verified Petition of Jersey Central Power & Light Company for Review and Approval of Its Deferred Balances Relating to the Market Transition Charge and Societal Benefits Charge* ("deferred balances proceeding").

[7] Exhibit S-6 submitted in the deferred balances proceeding indicated that as of December 31, 2002, the balance in the Saxton decommissioning trusts funded by New Jersey ratepayers was $0.5 million as compared to a combined balance of approximately $4,000 in the trusts funded by Pennsylvania ratepayers, whose funding ended on January 1, 1999, as stated by the Company in Exhibit S-8.

2, are recognized experts on nuclear decommissioning, and the Board is content to rely on their expertise in determining those elements of the cost Update that are relevant and must be considered in preparing the estimate for TMI-2 and to omit those elements that are not. We also note that if a utility has had its initial decommissioning cost estimate accepted by the Board pursuant to Chapter 14:5A, as is the case here, in lieu of an Update, subparagraph 2.1 (f) allows the utility to file "a summary of changes detailing the cost categories, assumptions, escalation factors and Update elements where significant changes have occurred and the reason(s) for the changes." Thus when completed, the TLG study, incorporating those elements specified in the Update as are applicable to TMI-2, together with a summary describing the changes from the previous cost estimate, we believe will satisfy the regulation's intent.

However, just as the uniqueness of the TMI-2 situation may render some elements of the Update irrelevant, information we deem useful but not required by the Update should also be supplied, in particular, a study that would examine additional, and potentially more economic options to decommission TMI-2 than the plan now contemplated by the Company, which, as noted above, calls for continued monitored storage of TMI-2 until TMI-1 is retired from commercial service, at which time decommissioning of both units would begin. While this would presumably allow non-incremental, or non-unit specific costs to be shared between both units and other potential economies to be achieved, should an extension in TMI-1's operating license be sought from and granted by the NRC, TMI-2 could potentially be exposed to an additional lengthy period of monitored storage and cost escalation, negating some if not all of the benefit, if any, that might be achieved from decommissioning both units at the same time.[8] Moreover, delaying the onset of decommissioning until the year 2014, as now planned, could in and of itself be uneconomic. Thus either as part of, or as an addition to the TLG study, the Company's submittal should address the option of beginning the decommissioning of TMI-2 immediately, as opposed to waiting, as well as other alternatives as may be feasible and economic. Accordingly, with these modifications the Board HEREBY GRANTS the Company's waiver request with respect to the TMI-2 cost Update, *nunc pro tunc,* and HEREBY DIRECTS the Company to file the TLG study, supplemented as set forth herein, with the Board no later than September 30, 2004.

Directive to File Supplemental Testimony

As indicated above, the funding of Saxton decommissioning costs by the Company's ratepayers was terminated by the Board on the basis that New Jersey ratepayers had contributed more than their fair share of the cost of decommissioning this unit relative to the ratepayers of the Company's Pennsylvania affiliates, Met-Ed and Penelec. As noted *supra* (in footnote 7), funding of Saxton decommissioning costs by the ratepayers of the Company's Pennsylvania affiliates ended on January 1, 1999.

[8] The Company's rates currently include $0.25 million as the New Jersey ratepayer share of TMI-2 monitored storage costs of about $2.4 million per year. (Exhibit S-9, deferred balances proceeding.)

Although the Deferred Balances Order approved continued funding of TMI-2 decommissioning costs at the pre-existing level after updating to reflect the balances in the trusts[9] and changes in the assumed inflation and fund earnings rates,[10] *i.e*., at the rate of $2.9 million annually, the Board has a similar "fairness" concern with respect to the funding of the decommissioning costs of this unit. As indicated in Exhibit S-6 submitted in the deferred balances proceeding referred to *supra*, funding of TMI-2 decommissioning costs by Penelec's ratepayers ceased in 1999, and while ongoing at the rate of $9.5 million annually through the year 2010, funding by Met-Ed's ratepayers will end after that year. While not as pronounced as the Saxton differences, the trust fund balances as of December 31, 2002 also strongly suggest that New Jersey ratepayers have contributed a disproportionate share toward the cost of decommissioning TMI-2, in that the balances in the Company's, Met-Ed's and Penelec's TMI-2 decommissioning trusts as of that date were $106.3 million, $155.7 million and $88.8 million, respectively, for a total of $350.8 million. In percentage terms, JCP&L's, Met-Ed's and Penelec's fund balances on December 31, 2002 were 30.3%, 44.4% and 25.3% of the total, respectively, in contrast to their TMI-2 ownership shares of 25%, 50% and 25%. (*Id*.)

Given the myriad of issues addressed in the Company's deferred balances and associated proceedings,[11] as well as the similarly complex and extensive post-restructuring proceedings underway at the same time for the other three electric utilities, the Board did not consider the record sufficiently developed in the Company's deferred balances proceeding as to support a finding that funding of TMI-2 decommissioning costs by New Jersey ratepayers should be terminated. For example, although the trust fund balances just noted suggest that JCP&L's ratepayers have borne a disproportionate share of TMI-2 decommissioning funding to date, the balances include shareholder as well as ratepayer contributions, and could also reflect differences in fund performance and tax aspects that should be taken into account before definitively concluding that New Jersey ratepayers have contributed more than their fair

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[9] *i.e*., the "qualified" trust, to which contributions are tax deductible, and the "non-qualified" trust, to which contributions are not.

[10] Reductions in the assumed inflation and fund earnings rates from 5.50% to 4.40% and from 6.75% to 5.83%, respectively, as stated in the Company's Reply Brief submitted in the deferred balances proceeding at 113, referencing Exhibits S-4 and S-7.

[11] *I/M/O the Verified Petition of Jersey Central Power & Light Company for Review and Approval of an Increase in and Adjustments to its Unbundled Rates and Charges for Electric Service, and for Approval of Other Proposed Tariff Revisions in Connection Therewith* (Docket No. ER02080506); *I/M/O the Consumer Education Program on Electric Rate Discounts and Energy Competition – Jersey Central Power & Light Company's Verified Petition for Declaratory Ruling* (Docket No. EO02070417*); I/M/O the Verified Petition of Jersey Central Power & Light Company for Review and Approval of Costs Incurred for Environmental Remediation of Manufactured Gas Plant Sites and for an Increase in the Remediation Adjustment Clause of its Filed Tariff in Connection Therewith* (Docket No. ER02030173); and I*/M/O the Petitions of Jersey Central Power & Light Company for Increases in its Levelized Energy Adjustment Clause Charge and Demand Side Factor* (Docket Nos. ER95120633, *et al.*).

share. Nor do the current balances reflect the additional Met-Ed funding that will continue through the year 2010. The Board does, however, intend to explore this issue further on a more complete record in this proceeding. Moreover, we do not consider the potential termination of funding by New Jersey ratepayers to be inconsistent with the stated purpose of Chapter 14:5A, that of ensuring that adequate funds are available to complete decommissioning activities, but rather as a potentially needed and equitable rebalancing of the respective shares of the ratepayers of the owning companies and the parent company's shareholders.[12] Accordingly, the Board HEREBY DIRECTS the Company to file, within 30 days of the date of this Order, testimony either supporting a continuation of the current level and duration of the funding of TMI-2 decommissioning costs by New Jersey ratepayers, or alternatively, proposing a reduction, termination or capping of the funding consistent with the apparently lower funding of TMI-2 decommissioning costs by the ratepayers of the Company's Pennsylvania affiliates. The testimony shall also include the following:

1. A description of the ratemaking treatment historically accorded TMI-2 decommissioning costs by the Pennsylvania and New Jersey state commissions, as well as the Federal Energy Regulatory Commission ("FERC") if decommissioning costs were included in FERC jurisdictional rates;

2. The balances in each of the owning utilities' TMI-2 decommissioning trusts as of the most recent date for which the data is available, showing the ratepayer and stockholder contributions and fund earnings separately; and

3. The projected balances in the owning utilities' decommissioning trusts as of the date TMI-2 decommissioning is anticipated to begin, *i.e.*, in 2014, based on the application of consistent fund earnings rates to each fund, and assuming continuation of current ratepayer funding levels by each of the owning utilities (zero for Penelec). Again, the ratepayer and shareholder contributions and projected fund earnings should be shown separately.

The testimony shall additionally address the disposition of excess funds, if any, following the completion of TMI-2's decommissioning, *i.e.*, whether if, after the Company pays its 25% share of TMI-2's decommissioning costs actually incurred, there are excess funds remaining in the TMI-2 decommissioning trust, should the excess be remitted or not remitted to the Company's ratepayers. The Company should also address this issue to the extent it may apply to the Saxton trust. In the event the Board should determine that New Jersey's ratepayers have contributed a disproportionate share of the funding of TMI-2

[12] In arguing against Staff's proposed Saxton disallowance in the deferred balances proceeding, the Company in its Reply Brief (at 114) noted that termination of the funding of Saxton's decommissioning costs by the ratepayers of its Pennsylvania affiliates did not mean the affiliates had assumed less responsibility for decommissioning costs, but instead that shareholders would make up the difference, if necessary, in funding requirements.

decommissioning costs and that further contributions should be terminated immediately, the Company's testimony should additionally address the appropriateness of making a rate adjustment (credit) via the Societal Benefits Charge to remit to ratepayers an amount equal to the contributions New Jersey ratepayers have made to the TMI-2 decommissioning trusts in excess of their fair share, as determined by the Board. Finally, Staff is directed to consult with the Company and the Advocate to develop a procedural schedule for the conduct of this proceeding before the Board.

DATED: April 28, 2004

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST: *(SIGNED)*

KRISTI IZZO
SECRETARY